

0.033 lbs. NO_x/mm BTU. All stack tests shall be conducted in accordance with U.S. EPA reference methods set forth at 40 C.F.R. Subpart 60, Appendix A. Pro-Tec shall notify U.S. EPA in writing of its intent to conduct a stack test not less than fourteen (14) days prior to the scheduled date of any stack test conducted to determine compliance with the emission rate set forth in this Paragraph, and U.S. EPA shall have the right to observe any such stack test.

a. Pro-Tec shall be liable for daily stipulated penalties pursuant to Section VII of this Consent Decree if any stack test fails to demonstrate compliance with the emission rate set forth in this Paragraph, or is interrupted prior to its completion for reasons other than equipment malfunctions or safety considerations, commencing on the date of such stack test and continuing until a follow-up stack test demonstrates compliance. Pro-Tec shall notify U.S. EPA in writing not later than fourteen (14) days after each of the following occur (or within seven (7) days of the entry of this Consent Decree, whichever is later):

- i. installation of the Low-NO_x burners is completed;
- ii. operation of the Low-NO_x burners begins;
- iii. and each stack test required under this Paragraph is completed.

Pro-Tec shall submit to U.S. EPA the results of each stack test required under this Paragraph, including the results of any stack test interrupted prior to its completion, within thirty (30) days after conducting such stack test.

VI. CIVIL PENALTY

14. Not later than thirty (30) days after entry of this Consent Decree, Pro-Tec shall pay to the United States a civil penalty in the amount of \$1,050,000, plus Interest accrued from the date this Consent Decree is lodged with the Court. The payment shall be made by Fed Wire

Electronic Funds Transfer ("EFT") to the Department of Justice Lockbox Bank, in accordance with specific instructions to be provided to Pro-Tec following entry of this Consent Decree, and shall reference DOJ Case No. 90-5-2-1-06019, the Civil Action Number assigned to this case by the United States District Court, Northern District of Ohio, and U.S.A.O. File No. 1998V01106. Any funds received at the Lockbox Bank after 3:00 p.m. (Eastern Time) shall be credited on the next business day. Pro-Tec shall advise the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Ohio at the time payment is being wire-transferred to the lock-box bank. In addition, Pro-Tec shall confirm to U.S. EPA and the Department of Justice that payment has been made by providing notice in the manner specified in Section XI (Notice), below.

15. Civil penalties paid pursuant to this Consent Decree shall not be deductible for purposes of Federal taxes.

VII. STIPULATED PENALTIES

16. Defendant shall be liable for stipulated civil penalties to the United States for failure to comply with the requirements of this Consent Decree unless excused under Section VIII (Force Majeure). Defendant shall pay the following stipulated penalties for each day of each violation for noncompliance with any of the requirements identified below:

	<u>Period of Noncompliance</u>		
	Days 1-30 <u>(per day)</u>	Days 31-60 <u>(per day)</u>	Over 60 days <u>(per day)</u>
Failure to submit a complete PSD analysis for CO emissions at CGL #1 if required under Paragraph 11 of this Consent Decree	\$2,500	\$5,000	\$7,500
Failure to employ approved BACT for CO if required under Paragraph 11 of this Consent Decree	\$2,500	\$5,000	\$7,500
Failure to install, operate, or maintain an SCR unit that continuously achieves the emission rate for the CGL #1 annealing furnace required by Paragraph 9 of this Consent Decree	\$2,500	\$5,000	\$7,500
Failure to install, operate, or maintain Low-NOx burners that continuously achieve an emission rate not to exceed 0.033 lbs. NOx/mm BTU at boiler B001 or B002 at CGL #1, as specified in Paragraph 10 of this Consent Decree	\$2,500	\$5,000	\$7,500
Failure to install, operate, or maintain SCR units that continuously achieve the emission rate for the CGL #2 annealing furnace required by Paragraph 12 of this Consent Decree	\$2,500	\$5,000	\$7,500
Failure to install, operate, or maintain Low-NOx burners that continuously achieve an emission rate of 0.033 lbs. NOx/mm BTU or less at boiler B043 or B044 at CGL #2, as specified in Paragraph 13 of this Consent Decree	\$2,500	\$5,000	\$7,500

Failure to conduct any stack test required by Paragraph 9, 10, 11, 12 or 13 of this Consent Decree	\$2,500	\$5,000	\$7,500
Failure of any stack test required by Paragraph 9, 10, 12 or 13 of this Consent Decree to demonstrate compliance with an emission rate required by any such Paragraph	\$2,500	\$5,000	\$7,500
Sale of Prime Commercial Product produced at CGL #2 during Commissioning of CGL #2	\$25,000	\$50,000	\$75,000
Failure to provide U.S. EPA with any notification required by Paragraph 9, 10, 11, 12 or 13 of this Consent Decree	\$250	\$500	\$1,000
Failure to submit reports and/or stack test results as required by Paragraph 9, 10, 11, 12 or 13 of this Consent Decree	\$250	\$500	\$1,000
Failure to pay the civil penalty as required by Paragraph 14 of this Consent Decree	\$250	\$500	\$1,000

17. All stipulated penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the day complete performance occurs or the day complete correction of noncompliance occurs.

18. Nothing herein shall preclude the simultaneous accrual of penalties for separate violations of this Consent Decree.

19. The stipulated penalties herein shall be in addition to, and shall in no way limit, other remedies or sanctions available to the United States by reason of Pro-Tec's failure to comply with the requirements of this Decree, the CAA, or the Ohio SIP.

20. Failure by the United States to demand stipulated penalties shall have no effect on the accrual of such penalties.

21. Pro-Tec shall pay the amount of any stipulated penalties required by Paragraph 16, above, within fifteen (15) days after a demand by the United States. Interest shall accrue on any stipulated penalty, or any portion thereof, that is overdue, at the rate set by 31 U.S.C. § 3717, and shall continue to accrue until the penalty is paid. All stipulated penalty payments shall be paid by wire transfer (following the procedures set forth in Paragraph 14) or by certified or cashier's check(s) made payable to the "Treasurer of the United States" and mailed to the United States Attorney's Office for the Northern District of Ohio. A transmittal letter shall accompany each payment indicating that the payment is for stipulated penalties, states the basis for the payment of stipulated penalties, and references the case name and civil action number, U.S.A.O. file no. 1998V01106, DOJ file no. 90-5-2-1-06019, and the name and address of the party making payment. Copies of the transmittal letter and check(s) shall be sent on the same day to the United States in the manner specified in Section XI (Notice).

VIII. FORCE MAJEURE

22. If any event causes or may cause a delay in Pro-Tec's compliance with any provision of this Consent Decree, Pro-Tec shall notify the United States in writing as soon as practicable, but in any event within ten (10) days of when Pro-Tec first knew of the event, or should have known of the event by the exercise of due diligence. In this notice, Pro-Tec shall

specifically reference this provision of the Consent Decree and describe the anticipated length of the delay, the cause or causes of the delay, all measures taken or to be taken by Pro-Tec to prevent or minimize the delay, and the schedule by which those measures will be implemented. Pro-Tec shall adopt all reasonable measures to avoid and minimize such delays.

23. Failure by Pro-Tec to comply with the above notice requirements shall constitute a waiver of Pro-Tec's right to assert force majeure. Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties.

24. If U.S. EPA agrees that the violation has been or will be caused solely by circumstances beyond the control of Defendant or any entity controlled by Defendant, including its contractors, and that Defendant could not have foreseen and prevented such delay by the exercise of due diligence, U.S. EPA shall extend the time for compliance with the particular requirement(s) affected by the force majeure by a period not exceeding the delay actually caused by such circumstances. Defendant shall not be liable for stipulated penalties for the period of any such delay. Such an extension does not alter the schedule for any other part of this Consent Decree, except that U.S. EPA shall extend the time for performance of other tasks under this Consent Decree that U.S. EPA determines will necessarily be delayed as a result of the force majeure.

25. If U.S. EPA does not agree with Pro-Tec's claim of force majeure, the Defendant may invoke the Dispute Resolution procedures of this Consent Decree. In any such Dispute Resolution proceeding, if the Court determines that the violation has been or will be caused solely by circumstances beyond the control of Defendant or any entity controlled by Defendant,

including their contractors, and that Defendant could not have foreseen and prevented such delay by the exercise of due diligence, Defendant shall be excused as to that violation and delay (including stipulated penalties), but only for the delay actually caused by such circumstances.

26. Pro-Tec shall bear the burden of proving that any delay of any requirement of this Consent Decree was caused solely by or will be caused solely by circumstances beyond the control of Pro-Tec or any entity it controls, including its contractors, and that Pro-Tec could not have foreseen and prevented such delay by the exercise of due diligence. Pro-Tec shall also bear the burden of proving the duration and extent of any delay attributable to such circumstances. Absent written approval by the United States, an extension of one compliance date based on a particular event shall not of itself result in an extension of a subsequent compliance date or dates.

27. Unanticipated or increased costs or expenses associated with the performance of Pro-Tec's obligations under this Consent Decree shall not constitute circumstances beyond Pro-Tec's control, or serve as a basis for an extension of time under this Section. Temporary shutdowns for routine maintenance do not constitute circumstances beyond Pro-Tec's control for purposes of this Section.

IX. DISPUTE RESOLUTION

28. Unless otherwise expressly provided for in this Consent Decree, Pro-Tec shall have the right to dispute any decision of U.S. EPA under this Consent Decree, and the provisions of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the provisions in this Section shall not apply to actions by the United States to enforce obligations of Defendant that have not been disputed in accordance with this Section.

29. Any dispute that arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends a written Notice of Dispute to the other party.

30. If the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by U.S. EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Pro-Tec invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by Pro-Tec, and any actions that Pro-Tec considers necessary to resolve the dispute.

31. An administrative record of the dispute shall be maintained by U.S. EPA. The administrative record shall include the Statement of Position and all of the information provided by Pro-Tec pursuant to the preceding Paragraph, as well as any other documents relied upon by U.S. EPA in making its final decision pursuant to the next Paragraph. Where appropriate, U.S. EPA shall allow submission of supplemental statements of position, data, reports, or affidavits, by the parties to the dispute.

32. If U.S. EPA concurs with Pro-Tec's position, U.S. EPA shall provide written notice of such concurrence to Defendant. If U.S. EPA does not concur with the Pro-Tec's position, U.S. EPA shall so notify the Defendant in writing, setting forth the basis of its decision. U.S. EPA's decision shall control unless, within fifteen (15) days after receipt of U.S. EPA's

written determination, Pro-Tec files a notice of judicial appeal that shall set forth a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the notice of judicial appeal.

33. In any such judicial appeal, Pro-Tec shall have the burden of demonstrating that the United States' position is arbitrary and capricious or otherwise not in accordance with law. The Court shall base its decision on the administrative record. The Court may grant relief, or may, upon motion of either party or on its own motion, remand the dispute for further consideration by U.S. EPA, including supplementation of the administrative record as appropriate.

34. The invocation of formal dispute resolution procedures under this Section shall not of itself extend or postpone any of Pro-Tec's obligations under this Consent Decree, but the payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue during proceedings to resolve disputes under this Consent Decree until the following:

a. If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to the Court, accrued penalties determined to be owing shall be paid to U.S. EPA within fifteen (15) days of the agreement or Defendant's receipt of Plaintiff's decision;

b. If the dispute is appealed to the Court and the U.S. EPA prevails in whole or in part, within sixty (60) days of its receipt of the Court's decision, Pro-

Tec shall pay all accrued penalties determined by the Court to be owed to U.S. EPA, except as provided in Subparagraph c., below;

c. If the District Court's decision is appealed by any party, within sixty (60) days of receipt of the District Court's decision, Pro-Tec shall pay all accrued penalties determined by the Court to be owing to the United States into an interest-bearing escrow account. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the prevailing party as ordered by the appellate court.

X. PUBLIC ACCESS TO INFORMATION

35. All information and documents Defendant submits to U.S. EPA pursuant to this Consent Decree shall be subject to public inspection, unless Defendant identifies and supports a claim for confidential business information in accordance with 40 C.F.R. Part 2.

36. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2.

XI. NOTICE

37. Unless otherwise provided herein, notifications to or communications with U.S. EPA or the Department of Justice shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested.

38. Unless this Consent Decree states otherwise, all notices, submissions, or communications in connection with this Consent Decree shall be addressed as follows:

As to the U.S. EPA:

Chief, Air Enforcement and Compliance
Assurance Branch
Air and Radiation Division, AE-17J
U.S. EPA, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Office of Regional Counsel (C-14J)
U.S. EPA, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to the Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(Reference: DOJ Case No. 90-5-2-1-06019)

As to Pro-Tec Coating Company:

General Manager
Pro-Tec Coating Company
5000 County Road 5
Leipsic, Ohio 45856

39. All submissions, reports, or notices required by this Consent Decree to be submitted by the Defendant shall be certified by a responsible corporate official, and accompanied by the following certification: